Retail Clerks Local 1689, affiliated with United Food and Commerical Workers International, AFL-CIO[1] ***and*** **Market Basket Stores, Inc., Safeway Stores, Inc., Carr's Quality Centers, d/b/a Foodland, and Northland Hub, Inc., d/b/a Southgate Hub**[2] **and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 959, Alaska.**[3] Cases 19-CD-378-1, 19-CD-378-2, 19-CD-378-3, and 19-CD-378-4

June 12, 1981

DECISION AND ORDER QUASHING NOTICE OF HEARING

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed on January 2, 1981, by Market Basket Stores, Inc., Safeway Stores, Inc., Carr's Quality Centers, d/b/a Foodland, and Northland Hub, Inc., d/b/a Southgate Hub, herein called the Employers, alleging that Retail Clerks Local 1689, affiliated with United Food and Commercial Workers International, AFL-CIO, herein called UFCW, violated Section 8(b)(4)(D) of the National Labor Relations Act, as amended, by engaging in certain proscribed activity with an object of forcing or requiring the Employers to assign certain work to employees represented by UFCW rather than to employees represented by International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 959, Alaska, herein called Teamsters.

Pursuant to notice, a hearing was held before Hearing Officer Patrick F. Dunham on January 28, 1981. All parties, including the Employers, UFCW, and the Teamsters, appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Teamsters, UFCW, and the Employers filed briefs.[4]

The Board has reviewed the rulings made by the Hearing Officer at the hearing and finds they are free from prejudicial error. The rulings are hereby affirmed. Upon the entire record in this case, including the aforementioned briefs, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYERS

The parties stipulated, and we find, that the Employers are Alaska corporations with offices and places of business in Fairbanks, Alaska, where they are engaged in the retail sale of food and grocery products. During the last calendar year, each of the Employers had a gross sales volume in excess of $500,000 and purchased goods valued in excess of $50,000 directly from suppliers located outside the State of Alaska. We find that each Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that the Teamsters and UFCW are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts*

Since 1957, each of the Employers has maintained a collective-bargaining agreement with UFCW. Article I states that the Fairbanks Retail Grocers recognizes "Retail Clerks Local 1689 as the sole and exclusive collective-bargaining agency for a unit consisting of all employees employed in the employers' present and future grocery stores." The current agreement runs from July 1, 1980, until August 1, 1983.

Since at least 1961, the Employers have had a "City Delivery and Local Cartage Agreement" with the Teamsters. This contract existed side by side with the Retail Clerks Agreement until June 30, 1980, when the last one expired. The agreement with the Teamsters required the employers to recognize the Teamsters "as the collective-bargaining agency for such of his employees as may be employed as Teamsters, Drivers, Chauffeurs, Warehousemen or as employees under any classifications within the jurisdiction of the Union." The contract goes on to refer to the following job classifications as within the Teamsters jurisdiction: Dispatcher/Head Warehousemen, Working Foreman, Boom Truck (Driver), Drivers, Swampers and Warehousemen, Utility Maintenance, and Machine Operators.

When the Teamsters first represented employees of the Employers, retail grocers were warehousing a considerable amount of their inventory. At that time, due to infrequent shipment of goods, each store maintained its own "back room" which was large enough to hold a month's supply of merchandise. These stores filed orders for families and villages in remote areas. With the advent of better shipping methods, including containers and refrigerated vans, the industry changed drastically. Now

[1] UFCW's name appears as amended at the hearing.

[2] The Employers' names appear as amended at the hearing.

[3] Local 959's name appears as amended at the hearing.

[4] The Teamsters filed a motion to supplement the record and the Employers filed a response to that motion. In light of our decision herein, we find it unnecessary to pass on the motion to supplement the record.

there is warehousing separate from the stores, and more stores are located in remote areas. The large "back rooms" disappeared as did the old teamster job classifications.

A practice developed in the stores whereby each Employer would designate a particular employee as the "store Teamster." The employee's duties do not change upon becoming the store teamster, and such duties are the same as those performed by employees represented by UFCW. In each store, the store teamster works in different job classifications including the following: assistant manager, dairyman, nonfood supervisor, meatcutter, inventory control clerk, and checker. The teamster is compensated at $3 to $5 more per hour than the other employees, and is included in the Teamsters pension and health and welfare benefit plans which call for employer payments of $4 more than the UFCW contract.

In November 1980, the UFCW advised the Employers that it would strike if the disputed work were assigned to the employees represented by the Teamsters.

B. *The Work in Dispute*

The work in dispute concerns the work of one employee, currently designated as the "store Teamster," in each of the Employers' stores.

C. *The Contentions of the Parties*

The Employers contend that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. The Employers all claim that they prefer that the disputed work be assigned to employees represented by the UFCW and that the Board should so find. They argue that the collective-bargaining agreements with the Teamsters have expired and they indicate that they do not wish to enter into new agreements. They contend that the skills involved are clearly "clerk" skills and that the industry practice is that employees performing such skills are represented by the UFCW. The Employers further contend that it is more efficient and economical if the employees performing the work in question are represented by the UFCW.

The UFCW contends that the work done by each store teamster is the same as that done by the employees it represents and that the work should be assigned to those employees.

The Teamsters contends that the work should be assigned to the employees it represents because it has been theirs historically and because it is required by their collective-bargaining agreements with the Employers. It further contends that there is an agreed-upon method for the voluntary settlement of the instant dispute.

D. *Applicability of the Act*

Before the Board may proceed to a determination of dispute under Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. On the record before us, we are not satisfied that any such violation has occurred in this case.

The Supreme Court in *Carey* v. *Westinghouse Electric Corp.*[5] emphasized the difficulty of distinguishing between work assignment disputes and controversies over which of two or more unions should represent certain employees. The Court stated therein:

> We have here a so-called "jurisdictional" dispute involving two unions and the employer. But the term "jurisdictional" is not a word of a single meaning. In the setting of the present case this "jurisdictional" dispute could be one of two different, though related, species: either—(1) a controversy as to whether certain work should be performed by workers in one bargaining unit or those in another; or (2) a controversy as to which union should represent the employees doing particular work.[6]

We believe the circumstances herein fit into the second of the aforementioned categories. As shown, the work performed by each store teamster is different in each store and is the same as that performed by employees represented by UFCW. Thus, there is no dispute over specific work or job tasks, but merely a dispute over which of two unions should represent certain employees. Since Section 10(k) remedies only the situation described in the first of the aforementioned categories, it is not applicable herein.

Upon the basis of the foregoing, we are satisfied, and conclude, that the dispute herein is not over the assignment of work to one group of employees rather than another within the meaning of Section 10(k). Accordingly, we shall quash the notice of hearing.

ORDER

It is hereby ordered that the notice of hearing issued in this case be and it hereby is, quashed.

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[5] 375 U.S. 261 (1964).

[6] 375 U.S. at 263-264.